IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1133 of 2002
TO
FIRST APPEAL No 1152 of 2002

WITH

CIVIL APPLICATION No 3980 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DECD.KALAJI MANGAJI THAKOR THRO'HIS HEIR AND LEGAL REPR.

Versus

SP.LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 1133 to 1152 of 2002
   MR AJ PATEL for Petitioner No. 1-1/1
   MR AD OZA, GP in F.A. Nos. 1133 to 1142 of 2002 and
   MR KT DAVE, AGP in F.A. Nos. 1143 to 1152 of 2002 for Respondent.
2. Civil Application No. 3980 of 2002
   MR AJ PATEL for Petitioner No. 1

MR KT DAVE, AGP for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/10/2003

ORAL COMMON JUDGEMENT
(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This group of appeals is filed by the original claimants for challenging the common judgment and award dated 20/2/2001 rendered by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos. 539/1995 to 554/1995, 1458/1995, 1460/1995, 1463/1995 and 1475/1995. The appellants' grievance is that the compensation awarded by the Reference Court for the acquisition of their land by the respondent is grossly inadequate and it is required to be enhanced.

1.1. Since all these appeals involve a common set of facts as well as common question of law, they are disposed of by this common judgment.

2. According to the appellants, their agricultural lands situated in the outskirts of village Santej, Taluka Kalol in Mehsana district have been acquired by the respondent for the public purpose, namely construction of Narmada Main Canal. The notification u/S. 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 21st February, 1992 followed by notification issued u/S. 6 of the Act on 11th August, 1992. The Special Land Acquisition Officer i.e. respondent, after complying with all the formalities, declared the award u/S. 11 of the Act on 24th March, 1994. He determined the market value of the lands in question at the rate of Rs.2/= per sq. mtr. for non-irrigated land and Rs.3/= per sq. mtr. for irrigated land. This was challenged by the appellants by filing references u/S. 18 of the Act before the learned Extra Assistant Judge, Mehsana, which came to be numbered as aforesaid.

2.1. The Reference Court after taking into consideration the material placed before it in the form of documentary evidence as well as oral evidence, came to the conclusion that the compensation determined by respondent was inadequate and it was required to be enhanced. In the opinion of the Reference Court the

market value of the lands in question was Rs.15/= per sq. mtr. It, therefore, enhanced the compensation to Rs.15/= inclusive of the amount awarded by the Special Land Acquisition Officer by judgment dated 20/2/2001. This amount has been awarded against the claim of Rs.100/= to Rs.200/= per sq. mtr. made by the appellants before the Reference Court. The learned Judge by the said judgment also directed the respondents to pay interest on the additional amount of compensation @ 9% from the date of issuance of notification u/S. 4 of the Act. It further directed to pay solatium to the claimants @ 30% on the additional amount of compensation as per the requirement of section 23(2) of the Act. The Reference Court, however, declined to award interest on the amount awarded u/S. 23(2) and 23(1-A) of the Act.

2.2. The appellants have made two fold grievance in these appeals; firstly that the compensation determined by the Reference Court is inadequate and secondly that it ought to have awarded interest on the additional amount u/S. 23 (2) and 23 (1-A) of the Act.

3. We have heard Mr. Jayesh M. Patel, learned advocate appearing for Mr. A.J. Patel for the appellants and Mr. K.T. Dave, Ld. AGP for the respondent. Mr. Patel has submitted that the award made by the Reference Court is erroneous in as much as the correct market value has not been determined by the Reference Court. His submission is that considering the nature of the land, the development of village Santej and other relevant factors, the amount of compensation awarded by the Reference Court is grossly inadequate. He has further submitted that in view of the judgment rendered by the Apex Court in the case of Sunder v/s. Union of India reported in 2001 (3) G.L.H. at page 446, the Reference Court ought to have awarded interest on the amount awarded u/S. 23 (2) and 23 (1-A) of the Act. He has cited before us the decision rendered by this very Bench in the case of Thakor Bhavanji Jenaji v/s. Special Land Acquisition Officer dated 03/09/2003 in First Appeal No. 110 of 2002 and its cognate matters and has submitted that the correct market value of the lands forming subject matter of these appeals would be Rs.70/= per sq. mtr.

3.1. As against that, Mr. Dave has supported the judgment of the Reference Court and has submitted that considering the evidence on record and the attending circumstances, it is very clear that the amount of compensation awarded by the Reference Court is just and proper and there is no necessity for this Court to

disturb the award.

4. We have carefully gone through the record of these appeals and also considered the submissions made by the counsels for the appellants and respondent. It is very clear from the record that the lands in question were required by the respondent for the public purpose, namely construction of Narmada Main Canal and that these lands are situated in the sim of village Santej. The question regarding determination of the just and proper market value of the lands situated at village Santej and acquired for the construction of Narmada Canal came under consideration before us while hearing the First Appeal No. 110 of 2002 and its cognate matters. In that group of appeals the notification u/S. 4 of the Act was issued on 21st February, 1992 and notification u/S. 6 was issued on 11th August, 1992. Under these notifications the lands were sought to be acquired by the Special Land Acquisition Officer for the aforesaid public purpose. In the present case also, the lands are situated at village Santej and the notifications under the provisions of sections 4 and 6 of the Act have been issued on 21st February, 1992 and 11th August, 1992. In the earlier cases the Reference Court had enhanced the amount of compensation awarded by the Special Land Acquisition Officer of Rs.3/= per sq. mtr. for irrigated and Rs.2/= per sq. mtr. for non-irrigated land and had determined the market value at Rs.15/= per sq. mtr. So is the value fixed by the Reference Court in the present cases. Thus, practically on all counts the facts involved are identical as in the case of First Appeal No. 110 of 2002. We have, after appreciating the material placed on record, come to the conclusion while deciding First Appeal No. 110 of 2002 and its cognate matters that the market value of the lands in question ought to have been Rs.70/= per sq. mtr. We, therefore, awarded Rs.55/= per sq. mtr. by way of additional amount of compensation to the appellants of those appeals. We have also carefully scrutinised the material on the record of these appeals and we have found that there is hardly any distinguishing feature which may require us to take a different view. In other words, so far the market value of the lands in question in the present appeals is concerned, in light of the decision rendered in First Appeal No. 110 of 2002 it has to be at Rs.70/= per sq. mtr. and, therefore, we hold that the just and adequate compensation to be paid to the appellants should be at the rate of Rs.70/= per sq. mtr. i.e. Rs.55/= per sq. mtr. over and above Rs.15/= per sq. mtr. determined by the Reference Court.

4.1. So far the second submission of Mr. Patel is

concerned, we are in total agreement with the same. The Apex Court in the case of Sunder (supra) has held that the expression "awarded amount" means all the amount of compensation worked out u/S. 23 of the Act. It has clarified the position further by saying that -

"We make it clear that the compensation awarded include not only the total sum arrived at as per sub-section (1) of S.23 but the remaining sub-section thereof as well. It is thus clear from S. 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S. 23 including all the sub-sections thereof."

In view of what has been laid down by the Apex Court in aforesaid decision, the conclusion reached by the Reference Court is required to be set aside and the appellants are required to be awarded interest at the rate of 9% p.a. for the first year and thereafter at the rate of 15% p.a. till the amount is deposited on the amount awarded under Sections 23(2) and 23(1-A) of the Act. The appellants have claimed additional amount of Rs.60/= per sq. mtr. but in view of the foregoing discussion, additional amount of Rs.55/= per sq. mtr. can be awarded as compensation to the appellants. We, therefore, direct the respondent to pay to the appellants compensation of additional amount of Rs.55/= per sq. mtr. together with all the permissible benefits available to the appellants under the Act including the amounts awardable u/S. 23 (1-A) and u/S. 23(2) of the Act. Interest at the rate stated above shall be paid on additional amount of compensation as well as amount awarded u/S. 23 (1-A) and 23 (2) of the Act.

5. The respondent is directed to deposit the additional amount within two months from the date of receipt of the writ of this order before the trial Court.

6. The net result is that the appeals are partly allowed with no order as to costs.

R & P, if any, be sent back to the trial Court immediately.

Civil Application No. 3980 of 2002 is filed for bringing the heirs of deceased claimant on record. Hence the application is granted.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.